*THE HONOURABLE SRI JUSTICE P.S.NARAYANA

+W.P. NO.2763 OF 2006

%16.11.2006

P.Rajasekhar
And 13 others.

..Petitioners

Vs.

$ The Commissioner,
Municipal Corporation of Visakhapatnam,
Visakhapatnam
And another Respondents.

!Counsel for the Petitioners : Nandigam Krishna Rao

^Counsel for the Respondent No.1: N.Ranga Reddy, SC for R.1
Counsel for the Respndent NO.2: G.P. for Municipal Admn.,& Urban
Development

<Gist :

>Head Note:

?Cases Referred:

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.2763 OF 2006

DATED: 16.11.2006

BETWEEN:

P.Rajasekhar
And 13 others.

… petitioners

And

The Commissioner,
Municipal Corporation of Visakhapatnam,
Visakhapatnam

And another

… Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.2763 OF 2006

ORDER:

1. Writ petitioners filed the present writ petition praying for issuance of writ of mandamus declaring the inaction of the 1st respondent in not renewing their licenses pursuant to their application, dated 19.11.l2005, for renewal of licenses as Surveyors/Supervisors pursuant to the directions of the 2nd respondent, dated 17.11.2004, in memo No.8514/M1/2003-6, as illegal, arbitrary and unconstitutional, being violative of Articles 14 and 21 of the Constitution of India, apart from being violative of principles of natural justice, and against Section 618 (1) of Hyderabad Municipal Corporation Act 1955 and consequently direct the 1st respondent to forthwith renew their licenses as Surveyors/Supervisors pursuant to their application dated 19.11.2005 and to pass such other order.

2. Sri Nandigam Krishna Rao, the learned counsel representing the

writ petitioners had drawn the attention of this Court to Section 618 of the Hyderabad Municipal Corporation Act 1955, (hereinafter, for short, referred to as 'the Act', for the purpose of convenience) and would maintain that the present impugned action was taken only keeping in view sub-section (2) of Section 618 of the Act totally ignoring sub-section (1) of the said provision. The learned counsel also incidentally had drawn the attention of this Court to the relevant byelaws and would maintain that the said byelaws may have to be understood in the context of sub-section (2) of Section 618 of the Act and this would not alter the situation in any way as far as sub-section (1) is concerned. The learned counsel also had taken this Court through the averments made in the affidavit filed in support of the writ petition and would maintain that in the facts and circumstances, the writ petition to be allowed.

3. Sri Ranga Reddy, the learned Standing Counsel representing the first respondent would maintain that the instructions given by the Government to the second respondent is by way of a memo only and hence, the same need not be followed by the first respondent, the Municipal Corporation of Vishakapatnam, (hereinafter, for short, referred to as 'the Corporation', for the purpose of convenience). The learned Standing Counsel also had referred to the impugned order and the reasons recorded therein and would maintain that taking the public interest into consideration, the said action was taken which is in accordance with law. The learned Standing Counsel also had drawn the attention of this Court to the relevant Municipal Corporation Building Bye-laws 1981, (hereinafter for short referred to as 'bye-laws', for the purpose of convenience) and also Appendix-C as well and would contend that in the light of the qualifications, which had been specified, the impugned action is in accordance with law.

4. Heard the counsel.

5. The writ petitioners are the licensed surveyors and the qualifications of the writ petitioners had been furnished in detail in para-3 of the affidavit filed in support of the writ petition. These writ petitioners are all qualified as Draughtsman Civil in ITI. It is stated that these petitioners were granted licenses for the respective years and the details in relation thereto also had been narrated. It is further stated that the writ petitioners are dependent on these licenses granted by the first respondent for their livelihood. Further, it was averred in para-5 of the affidavit filed in support of the writ petition that the petitioners are qualified in terms of the provisions of the Act, to act as Surveyors as they had necessary qualifications in the subject. It is further stated that apart from the qualifications which the petitioners had acquired, these are in accordance with the National Building Code of India as per Code 1970, the qualification of certificate from ITI is the necessary qualification to act as licensed Surveyor and hence, the petitioners are entitled to licenses to act as licensed surveyors in terms of National Building Code of India. It is further stated that the National Building Code of India 1970 is adopted by the State Government and accordingly, the government as well as the local bodies including the first respondent were granting license for ITI Civil candidates to act as licensed surveyors, supervisors as they are fully qualified and eligible and educated and trained in the subject. Further it was pleaded that the writ petitioners have been carrying on their professional duties without any remark whatsoever. Specific stand was taken that apart from the first respondent, all the municipalities and the Municipal Corporations in the State of Andhra Pradesh have been granting licenses to ITI certificate holders and to the candidates having such other equivalent qualifications and such licenses granted

are being renewed from time to time. Further it was also pleaded in para-8 of the affidavit filed in support of the writ petition that Section 618 of the Act, which is adopted by the first respondent, specifies that under Section 618(1) of the Act, the Commissioner may grant to any person he thinks fit a license to act as a surveyor for the purpose of this Act. Each such license shall be for a period of one year. Section 618(2) of the Act also had been referred to and the applicability or otherwise of sub-section (1) and sub-section (2) also had been narrated. The writ petitioners also further stated that Section 618(1) of the Act, inasmuch as it specifies that the Commissioner can grant license to any person whom he thinks fit, a license to act as surveyor for the purpose of the Act for a period of one year which is renewable from time to time. In the light of the same, the first respondent cannot fall back on sub-section (2) and insist on the other qualifications. Further, the applicability or otherwise of the bye-laws and appendix-C also had been explained. The writ petitioners also pleaded that they applied for renewal of license in the year 2004 to the first respondent and the first respondent had rejected their request for renewal of licenses holding that ITI candidates are not eligible to act as licensed surveyors. Accordingly, the first respondent also addressed a letter in proceedings Rc.No.631/2003/CP/G3, dated 16.3.2004 to second respondent, as against the same the President of the petitioners' associations had submitted a representation to the government and the government through proceedings dated 17.11.2004 vide memo No.8514/M1/2003-6 directed the first respondent to permit qualified and experienced ITI candidates to undertake drawings of building plans or supervise only for individual residential buildings in plots up to 200 square metres and up to 10 metres height. Though it had been stated in the said proceedings issued by the Government that with an

intention to have uniform policy, the government was intending to amend the byelaws as well as the Rules. The government never meant nor felt that ITI candidates are ineligible for undertaking building plans or supervise or to act as licensed surveyors. Specific directions had been issued to first respondent to permit the qualified and experienced ITI candidates to undertake drawing of building plans or supervise to the limited extent in Vishakapatnam as specified in the Government memo. It is stated that the Indian Institute of Architects had filed W.P.No.21934 of 2004 and had obtained ex parte interim order against the petitioners without making the petitioners as respondents in the said writ petition. As such the petitioners impleaded themselves in the said writ petition in W.P.M.P.No.7496 of 2005 and filed W.V.M.P.No.925 of 2005 and it is stated that the orders were modified directing the first respondent to consider the renewal of the licenses of the petitioners. It is also stated that even after the interim directions granted by this Court dated 30.11.2004, in W.P.M.P.No.28753 of 2004 in W.P.No.21934 of 2004, had been modified by order dated 21.6.2005, the petitioners submitted the applications dated 19.11.2005 to the first respondent, but the first respondent having received the same had not renewed the licenses to act as surveyors or supervisors and in such circumstances, the writ petitioners approached this Court.

6. This Court issued rule nisi on 16.2.2006. The first respondent filed counter affidavit wherein specific stand was taken that since the first respondent is competent either to grant/renew the licenses or to refuse/cancel in pursuance of powers conferred under Section 618(1) of the Act, the petitioners are not entitled for any relief prayed for. It was stated in para-4 of the counter affidavit that as per Section 618 (1) of the Act, the Commissioner may grant to any person, he thinks fit, to

act as surveyor for the purpose of the Act and this itself shows that the first respondent can grant license to the qualified and fit persons at the same time can refuse the application if disqualified or unfit person. It is stated that all petitioners are Draughtsman Civil ITI certificate holders and there is no provision in the Act to entertain the said persons to act as licensed surveyors. Section 618(2) of the Act had been referred to and specific stand was taken that the petitioners are not eligible to claim any relief under Section 618(2) of the Act. It was further stated that some of the qualified persons whose licenses were renewed from time to time had settled in some other professions and these persons are simply putting their signatures on the plans drawn by some other else and the first respondent detected the latches and issued memo, the person who signed on the plan approached the first respondent and submitted his cries stating that some other licensed surveyor had drawn the plan and he had only signed the plan. The first respondent also issued memos to the licensed surveyors who signed on the defective plans. It is further stated that in order to prevent all such malpractices, the first respondent corporation in pursuance of the powers conferred under the provisions of the Act had not entertained the representation of the petitioners who are only Draughtsman Civil ITI certificate holders. Hence, the alleged in action on the part of the first respondent is not admitted and denied vehemently. The first respondent further stated that as per the provisions contemplated under the Act the petitioners are not entitled to act as licensed surveyors/supervisors since they are having only ITI qualification. Draughtsman Civil Certificate is not equivalent to Diploma in Civil Engineering, as such there is no valid ground in the writ petition.

7. It was also stated in para-7 of the counter affidavit that it is a fact that the 2nd respondent issued orders in Memo No.8514/M1/2003-6,

dated 17.11.2004 advising the first respondent corporation to permit the qualified and experienced ITI candidates to undertake drawings of building plans/supervise only for individual residential buildings in plots up to 200 square metres not exceeding the height of 10 metres. When the matter was under consideration the Architect Engineers Association filed writ petition in W.P.No.21934 of 2004 and obtained stay in implementing the instructions passed in Memo No.8514/M1/2003-6 dated 17.11.2006. Since stay order is pending, the first respondent corporation cannot implement the memo referred above, issued by the 2nd respondent. Subsequently the petitioners herein themselves added as necessary parties in the above W.P.No.21934 of 2004 as per orders passed by the Hon'ble High Court in W.P.M.P.No.985 of 2005 dated 31.3.2005. After considering submissions of learned counsel for both sides the Hon'ble Court made the following order: "Respondent No.3 in the writ petition is at liberty to consider the renewal of licenses of the vacate stay petitioners". The first respondent corporation further submits that it is a fact that the petitioners submitted a representation 19.11.2005 to the first respondent with a request to consider their case for renewal of licenses in pursuance of above direction passed by the Hon'ble High Court. In this connection the first respondent corporation further stated that the work performance of the ITI qualified persons is found not satisfactory and most of the ITI candidates are not aware of the fundamental duties of a licensed surveyor. The duties of licensed technical personnel were described in Appendix-C at C-4 to C-4.7 as follows:

C-4 Duties of Licensed Technical personnel.

C-4.1 It shall be the duty of the licensed Technical Personnel in all matters wherein he is employed or engaged;

a) to comply with any orders passed and communicated to

him by the authority:

b) to satisfy himself that the survey boundaries of the site or sites, for building and the streets with their dimensions are correctly marked in the site plans or layout plans, that no encroachments are made into any street or any other Municipal or Government land:

c) to comply with the provisions of Hyderabad Municipal Corporation Act, 1955, Rules and Regulations or Byelaws framed there under, the requirements of development plan or town planning scheme under the Hyderabad Municipal Corporation Act or any other Act in force.

C-4.2 It shall be incumbent on the licensed Technical Personnel to co-operate with and assist the authority and the Corporation, Town Planning and Building staff in carrying out of and enforcing strictly the provisions of Hyderabad Municipal Corporation Act of 1955 and the Rules, Byelaws and Regulations made there under for the time being in force.

C-4.3 The licensed Technical Personnel shall not while employed to anything prejudicial to public interest and the objects for which he is licensed, or be a party to any evasion or attempted evasion of the provisions of the act, and the Rules, byelaws and regulations made thereunder and for the time being in force, and if he has reason to believe that the owner or other persons employing or engaging him entering such intentions, he shall forthwith report the same to the authority.

C-4.4 A Licensed Technical Personnel shall not associate himself with any construction not authorized or licensed by the Authority where such authorization or license is required under the provisions of the Act or Rules or any bye-laws framed there under.

C-4.5 Every licensed Technical Personnel shall in preparing the plans comply with the provisions and requirements of the act, and the Rules, byelaws and regulations made there under.

C-4.6 Every Licensed Technical Personnel shall in the plans prepared by him show correct details and dimensions and give correct information in respect of such plans or building or work for which he is employed or engaged.

C-4.7 Every Licensed Technical Personnel shall forthwith report to the authority if he finds any work having been commenced proceeded or completed either unauthorisedly or

without proper permission or license or in contravention of the provisions of the Act, or regulations or byelaws made there under.

It was further stated that as the work performance of the petitioners with ITI qualification was found not satisfactory, keeping the interest of the public, the said action was taken.

8. The memo No.8541/M1/2003-6 issued by the Government of Andhra Pradesh, Municipal Administration and Urban Development Department, dated 17.11.2004 reads as hereunder:

> " The attention of the Commissioner, Municipal Corporation Visakhapatnam is invited to the subject and reference cited. He is informed that the Government after careful examination of the matter have decided to make suitable amendment to the byelaws and the relevant rules under the HMC Act so as to adopt a uniform procedure in all the Corporations as suggested by the Director of Town and Country Planning Regarding issue of License to ITI candidates, pending such amendment of byelaws for uniform procedure, the Commissioner, Visakhapatnam Municipal Corporation is advised to permit the qualified and experienced ITI candidates to undertake drawing of building plans/supervise only for individual residential building in plots up to 200 sq.mts., and up to 10 mts., of height.
>
> The Commissioner, Visakhapatnam Municipal Corporation is requested to take further action accordingly."

9. The order made by the first respondent – Municipal Corporation, Vishakapatnam in Rc.No.831/2003/G7-24 dt.04.4.2003 reads as hereunder:

> " Sub: Town Planing – VMC – Issue of License for practicing as Licensed Architect/Engineer/Supervisor – Rejection of Application – Regarding.
>
> In pursuance of this office Press Notification published in Eenadu daily newspaper on 11.2.2003, you have applied for license for practicing as licensed Supervisor. But on verification of your application it is observed that you have not

possessed minimum required qualification as required under Section 618 of the HMC Act read with Appendix 'C' of the Building Byelaw No.4.2.3 of Municipal Corporation Building Bye Laws 1981, but you have possessed ITI Civil Draftsman Certificate.

Under Section 618 of the HMC Act read with Appendix 'C' of the Building Bye Law No.4.2.3 of Municipal Corporation Building Bye Laws 1981, the minimum qualification required for considering to permit for practicing as Licensed Supervisor is Diploma in Civil Engineering or its equivalent and the Hon'ble High Court of A.P., also expressed similar views in their order dated 25.2.2002 in W..No.24860 of 2000 and W.P.No.66 of 2001. But as per your application you have not possessed minimum requisite qualifications as required under Statutory Provisions of the HMC Act 1955.

In view of not possessing the minimum requisite qualifications as required under Statutory Provisions, your application is hereby rejected and returned along with the Demand Draft/pay order and further your are hereby requested to collect the security deposit from Accounts Officer by producing original receipt of payment, if any paid.

Yours faithfully,
Sd/-
For Commissioner."

10. Section 618 of the Act reads as hereunder:

*" **618. Grant of licenses to Surveyors and Plumbers:-** (1) The Commissioner may grant to any person he thinks fit a license to act as a surveyor for the purpose of this Act. Each such license shall be for a renewable period of one year.*

(2) If any applicant for a license to act as a surveyor is a licentiate of Civil Engineering or a person who has passed some test of professional qualification equivalent to that for a licentiate of Civil Engineering, his application shall not be refused by the Commissioner, except with the approval of the Standing Committee and upon the ground that the applicant is unfit, through incompetency, misconduct or other grave reason, to hold such license.

(3) If the Commissioner refuses any application for a

license under this section he shall, at the request of the applicant, furnish such applicant with his reasons, for such refusal in writing under his signature, without charge."

11. Byelaw 4.2.3 dealing with the qualifications of licensed Technical Personnel and competence of work reads as hereunder:

> *" **4.2.3. Qualifications of Licensed Technical Personnel and Competence of Work:** The technical personnel for the preparation of various plans and design and construction of building schemes shall be licensed by the authority as competent to do the work for which they are employed. The qualifications of the technical personnel and their competence to carry out different jobs, procedure for licensing and duties shall be as given in Appendix-C.*

In Appendix-C, C-1.1 and C-2.2 read as hereunder:

> *" **C-1.1** Every building work for which permission is sought under the Code shall be designed and supervised by a Licensed Architect/Engineer/Supervisor. Qualifications which an architect or engineer or supervisor shall have, before is registered by the local body and permitted to practice within the local body's jurisdiction are given in C-2.1 to C-2.3. The competence of such licensed personnel is also indicated in C-2.1 to C-2.3.*
>
> ***C-2.2**- The minimum qualifications for an Engineer shall be the Corporate Membership (Civil) of the Institution of Engineers (India) or such Degree or Diploma in Civil, Municipal or Structural Engineering which makes him eligible for such membership."*

12. On a careful reading of sub-section (1) and sub-section (2) of Section 618 of the Act, under sub-section (1) the Commissioner may grant to any person license for the purpose of this Act and each such license shall be for a renewable period of one year. No doubt, strong reliance is placed on sub-section (2) of the said provision. It is needless to say that sub-section (3) specifies that if the Commissioner

refuses any application for license under Section 618, he shall at the request of the applicant, furnish such applicant with his reasons, for such refusal in writing under his signature without charge.

13. Be that as it may, certain submissions are made that second respondent issued only a memo by way of instructions and no G.O., as such had been issued and hence, in such circumstances, the first respondent is not bound to follow such instructions. This Court need not express any further opinion relating to this aspect. But, however, whatever may be the instructions, when the instructions are issued by the Government, the local body, municipal corporation, the Municipality or a gram panchayat may have to follow such instructions unless such instructions are otherwise invalid. Even otherwise, in the light of the language of sub-section (1) and also in the light of the fact that the petitioners had been continuing as surveyors or supervisors for sufficiently a long time, after getting due renewal, now the first respondent is not justified in refusing the renewal by taking such a stand, as taken in the counter affidavit filed by the first respondent. Hence, this Court is of the considered opinion that even if an element of discretion is available to the first respondent, in the light of the language of sub-section (1) of Section 618 of the Act, the discretion definitely was not exercised properly and further, as already observed, the instructions issued by the Government to be followed, when that being so, this Court is of the considered opinion that the impugned action cannot be sustained and the writ petitioners in the present writ petition are bound to succeed.

14. Accordingly, the writ petition is hereby allowed. But, however, inasmuch as the first respondent Corporation is contending that in view of the public interest, this action had been taken, the parties to the lis to bear their own costs.

16.11.2006.

L.R.copy to marked : Yes / No

Mdaa.